THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.25204 OF 2006

DATED: 6TH DECEMBER, 2006.

Between :

1. Smt. Gopisetty Seethamahalakshmi
   and another .. Petitioners

And

1. The Bank of Maharashtra, Regional Office,
   Hyderabad-500 001 and 4 others.... Respondents

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WRIT PETITION NO.25204 OF 2006

ORDER :

The petitioners herein are the guarantors in respect of the loan availed by the respondents 3 and 4 from the 1st respondent Bank. Since there was default in repayment of the loan, the 1st respondent having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') issued a notice under Section 13 (2) of the Act for payment of the amounts due within 60 days. At that stage, the petitioners filed W.P.No.15709 of 2006 raising certain objections as to their liability as guarantors. The said writ petition was disposed of by this Court by order dated 28-7-2006 with a direction to the respondents 1 and 2 herein to consider the objections raised by the petitioners in terms of Section 13 (3A) of the Act and till such time not to take any coercive steps against the petitioners. It is not in dispute that the 1st respondent having considered the objections raised by the petitioners, informed the petitioners by letters dated 28-8-2006 and 18-9-2006 respectively that their objections are not tenable and they are liable to pay the amounts due under the loan account with future

interest.

Thereafter, the 1st respondent issued possession notice under Section 13 (4) of the Act on 1-11-2006 informing that they would proceed against the secured assets in accordance with the provisions of the Act and the Rules. The said notice dated 1-11-2006 is under challenge in this writ petition.

Though the petitioners raised various grounds, I am not inclined to go into merits of the case since under Section 17 of the Act an efficacious alternative remedy is available to the petitioners to make an application before the Tribunal having jurisdiction. All the contentions raised by the petitioners require a detailed enquiry on the basis of the evidence that may be adduced by the parties and it is neither proper nor possible for this Court to record any finding on such disputed questions of fact.

Though the learned Counsel for the petitioners contended that since the orders passed by the 1st respondent rejecting the objections raised by the petitioners are not appealable as per the provisions of subsection (3A) of Section13 of the Act, the remedy under Section 17 of the Act is not available to the petitioners, I am unable to agree.

As noted above, the orders passed by the 1st respondent dated 28-8-2006 and 18-9-2006 are not under challenge in this writ petition but what is challenged is the consequential possession notice issued under Section 13 (4) of the Act against which a remedy is available under Section 17 of the Act.

Accordingly, granting leave and liberty to the petitioners, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 6-12-2006
GBS